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AB 2839: Elections: deceptive media in advertisements.

Session Year: 2023-2024

House: Assembly

Current Status:

IN PROGRESS

(2024-08-29: Read third time. Urgency clause adopted. Passed. Ordered to the Assembly. (Ayes 32. Noes 5.).)

- ☒ Introduced
- ☒ First Committee Review
- ☒ First Chamber
- ☒ Second Committee Review
- ☒ Second Chamber
- ☐ Enacted

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Senate Standing Committee on Appropriations (8/2/2024)



SENATE COMMITTEE ON

Senator Anna Caballero, Chair**2023 - 2024 Regular Session****AB 2839 (Pellerin) - Elections: deceptive media in advertisements****Version:****Policy Vote:****Urgency:****Mandate:****Hearing Date:****Consultant:**

Bill Summary:

AB 2839 would (1) prohibit the distribution of campaign advertisements and other election communications that contain media that has been digitally altered in a deceptive way, and (2) allow a court to issue injunctive relief prohibiting the distribution of such content, and to award general or special damages against the person that distributed the content.

Fiscal Impact:

This bill would not have a fiscal impact to the Secretary of State (SOS).

By authorizing a claim by specified individuals and entities to enjoin distribution of a prohibited communication and seek damages, this bill may result in an increased number of civil actions that also receive precedence when filed in court. Consequently, the bill could result in potentially significant cost pressures to the courts; the magnitude is unknown (Trial Court Trust Fund (TCTF)). The specific number of new actions that could be filed under the bill also is unknown; however, it generally costs about \$1,000 to operate a courtroom for one hour. Courts are not funded on the basis of workload, and increased pressure on TCTF may create a need for increased funding for courts from the General Fund. The enacted 2024-25 budget includes \$37 million in ongoing support from the General Fund to continue to backfill TCTF for revenue declines.

Background:

Current law includes various provisions criminalizing deceptive tactics that undermine election integrity or interfere with voters' ability to participate in elections. This includes laws that prohibit distribution of false and misleading information about qualifications to vote or about the days, dates, times, and places where voting may occur; prohibit the misleading use of government seals in campaign literature; and prohibit coercing or deceiving people into voting in a way that was inconsistent with the person's intent.

In June 2024, a joint hearing was conducted by the Legislature's two elections committees focusing on artificial intelligence (AI) and elections. The hearing's purpose was to assist the Legislature in making informed decisions on legislation related to AI-generated and altered content. The ease with which people can create and spread misinformation and disinformation creates a world where many people may have trouble determining what is fact and what is fiction. The development of increasingly advanced AI tools has made once time-consuming activities much easier to complete, while also enabling the completion of tasks that are otherwise too complex for humans to complete on their own.

In 2018, the Legislature and Governor established the Office of Elections Cybersecurity (OEC) within SOS. OEC has two primary missions. First, it is responsible for coordinating efforts between SOS and local elections officials to reduce the likelihood and severity of cyber incidents that could interfere with the security or integrity of state elections. Second, OEC is tasked with monitoring and counteracting false or misleading information regarding the electoral process that is published online or on other platforms that may suppress voter participation, cause confusion, or disrupt the ability to ensure a secure election.

In 2019, the Legislature enacted AB 730 (Berman), which sought to address concerns that deepfake technology could be used to spread misinformation in political campaigns. AB 730 prohibits anyone from distributing deceptive audio or visual media with actual malice and the intent to injure a candidate's reputation or to deceive a voter, unless the media includes a disclaimer that it has been manipulated. AB 730 does not apply exclusively to deepfakes; it also applies to any intentional manipulation of audio or visual images where a reasonable person would be misled into believing it was authentic. The bill focused on materially deceptive representations of candidates, and not on deceptive media of other aspects of the electoral process. AB 730's provisions have been extended, and currently sunset on January 1, 2027.

Proposed Law

Proposed Law:

This bill would, among other things, do the following:

Prohibit a person, committee, or other entity from knowingly distributing an advertisement or other election communication, as defined, that contains certain materially deceptive content, as defined, with malice, as defined, subject to specified exemptions.

Apply this prohibition within 120 days of an election in California and, in specified cases, 60 days after an election.

Authorize a recipient of materially deceptive content distributed in violation, a candidate or committee participating in the election, or elections official, as defined, to file a civil action to enjoin the distribution of the media and to seek damages against the person, committee, or other entity that distributed it.

Require a court to place such proceedings on the calendar in the order of their date of filing and give the proceedings precedence.

Related Legislation:

AB 2355 (W. Carrillo) would require a campaign committee that creates, originally publishes, or originally distributes a political advertisement to include a disclosure stating that the audio, image, or video was generated or substantially altered using AI. The measure is currently pending in this Committee.

AB 2655 (Berman) would require large online social media platforms to block the posting or sending of materially deceptive and digitally modified or created content related to elections, or to label that content, before and after an election. The measure is currently pending in this Committee.

Staff Comments:

The Office of the Legislative Counsel has keyed this bill “non-fiscal.” However, the purview of this Committee, pursuant to Joint Rule 10.5, is to review and analyze bills that would, among other things, result in a substantial expenditure of state money. Thus, even though the bill was keyed “non-fiscal,” the Committee requested the bill to examine the extent to which it might potentially increase costs to the State.

The \$37 million in General Fund support for TCTF in 2024-25 is down sharply (over 50 percent)

from previous years. The comparative figure was \$74 million in 2023-24, \$72 million in 2022-23, and \$84 million in 2021-22.

-- END --

Discussed in Hearing



Aug 5, 2024

Senate Standing Committee on Appropriations



Jul 2, 2024

Senate Standing Committee on Judiciary



Jun 18, 2024

Senate Standing Committee on Elections and Constitutional Amendments



May 22, 2024

Assembly Floor

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Assembly Standing Committee on Judiciary

Gail Pellerin D



Apr 10, 2024

Assembly Standing Committee on Elections

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